REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application. Regarding the amendments, all amendments are made consistent with 35 USC §132 and no new matter has been added.

I. Election/Restrictions

Applicants confirm that Group I, claims 1-18 are selected to be examined on the merits. In order to expedite the prosecution of the present patent application, Applicants have cancelled claims 19 and 20 without prejudice or disclaimer.

II. Rejection Under 35 USC §112, Second Paragraph

The Examiner has rejected claims 1-18 as being indefinite for failing to particularly point out and distinctly claims the subject matter which Applicants regard as the invention. While Applicants respectfully disagree, specifically in light of the teachings set forth in the specification, Applicants have amended independent claims 1 and 10 in order to respond to the Examiner's comments and expedite the prosecution of the application. In view of this, Applicants submit that the claims, as now presented in amended form, fully comply with 35 USC §112, second paragraph. Therefore, it is requested that the second paragraph rejection be withdrawn and rendered moot.

III. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1-4, 7, 9-13, 16 and 18 under 35 USC §102(b) wherein the Examiner alleges that the same are anticipated by DE 19919711 (hereinafter, '711). In the rejection, the Examiner mentions, in summary, that the '711 reference discloses a product comprising tea or coffee with an aroma or essence compound in a bag. The Examiner admits that the '711 reference does not appear to specifically recite the preparation of the follow-up beverage composition from the precursor but that such a preparation would be inherent. Therefore, the Examiner believes that the rejection made under 35 USC §102(b) is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

The present invention as set forth in independent claim 1, as amended, is directed to a beverage precursor comprising:

a) an infusible or water soluble material selected from the group consisting of tea leaf, ground coffee, coffee or tea particulates, cocoa, herbs and a mixture thereof; and
b) aroma compound additive

wherein the infusible or water soluble material is present at a level that is from about 0.5 to about 25.0% by weight less than a conventional amount used for about a six to about eight ounce serving and the aroma compound is an additive and not originating from the infusible or water soluble material present, the conventional amount being defined as 1.90-2.50 grams for tea leaf, 3.5-6.5 grams for ground coffee, 1.4-2.4 grams

for coffee particulates, 0.30-0.90 grams for tea particulates, 1.0-2.5 grams for herb and 1.85-4.5 grams for cocoa.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, the amount of infusible or water soluble material present, that the infusible material may be tea leaf, that the aroma compound may be artificial or natural, and that the beverage precursor may be packed in a tea bag.

Independent claim 10, as amended, is directed to a beverage composition, the beverage composition made by contacting an aqueous solution and a beverage precursor comprising:

c) an infusible or water soluble material selected from the group consisting of tea leaf, ground coffee, coffee or tea particulates, cocoa, herbs and a mixture thereof; and
d) aroma compound additive

wherein the infusible or water soluble material is present at a level that is from about 0.5 to about 25.0% by weight less than a conventional amount used for about a six to about eight ounce serving and the aroma compound is an additive and not originating from the infusible or water soluble material present, the conventional amount being defined as 1.90-2.50 grams for tea leaf, 3.5-6.5 grams for ground coffee, 1.4-2.4 grams for coffee particulates, 0.30-0.90 grams for tea particulates, 1.0-2.5 grams for herb and 1.85-4.5 grams for cocoa.

The invention of claim 10 is further defined by the dependent claims which claim, among other things, the level or amount of infusible or water soluble material that may be present, that the infusible material is tea leaf, that the aroma compound may be natural aroma compound or artificial aroma compound and that the beverage precursor

may be packed in a tea bag. New claims 21 and 22 further define the independent claims such that the aroma compound added to precursor that is employed is also associated with a carrier.

In contrast, the '711 abstract merely describes aromatization of tea and coffee with aromas. The abstract further states that the invention makes it possible for the consumer to add aroma to basic tea or coffee.

Unlike the present invention, beverage precursor is prepared and ready for the consumer to use wherein the consumer needs no additional steps to prepare the desired beverage. Moreover, there is no teaching whatsoever in the '711 reference that even remotely suggests that a reduced level of infusible or water soluble material may be used in combination with aroma compound additive in order to result in a superior precursor or resulting beverage composition. Clearly, no teaching whatsoever in the '711 reference even remotely defines what constitutes less than a conventional amount of infusible or water soluble material as set forth in the invention as now presented.

In view of the above it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in a single reference, namely the '711 reference. In view of this, Applicants respectfully submit that the novelty rejection is improper and that the rejection made under 35 USC §102(b) should be withdrawn and rendered moot.

IV. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1-3 and 10-12 under 35 USC §102(b) as being anticipated by EP 560609 (hereinafter, '609), EP 001460 (hereinafter, '460), Stoeckli et al., U.S. Patent No. 4,496,596 (hereinafter, '596), EP 011324 (hereinafter, '324) or

Soughan, U.S. Patent No. 5,932,260 (hereinafter, '260). In the rejection, the Examiner mentions, in summary, that the '609 , '324, '460, and '260 references disclose a product comprising coffee with an aroma or essence component, the product being a precursor for the preparation of beverage. In view of this, the Examiner believes that the novelty rejection is warranted, and especially, in light of what the Examiner believes was indefinite language as originally presented.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 1, as presented, is directed to the beverage precursor comprising infusible or water soluble material and aroma compound additive wherein the amount of infusible or water soluble material present is at a reduced level when compared to conventional product. The beverage composition made from the same, as defined in independent claim 10, is superior in that when reduced levels of infusible or water soluble material are present in combination with aroma compound additive, the beverage is preferred by consumers when compared to conventional beverages made from infusible or water soluble material at typical levels and in the absence of aroma compound additive.

Independent claim 1 is further defined by the dependent claims which claim, among other things, specific amounts of infusible or water soluble material present within the beverage precursor. Independent claim 10 is further defined by the dependent claims which claim, among other things, specific amounts of infusible or water soluble material when compared to the conventional amount used to make a particular beverage composition.

Furthermore, independent claims 1 and 10 are further defined by newly filed claims 21 and 22 such that the aroma compound additive is one which is subjected to a carrier and carried.

In contrast, the '609, '596, '324, '460, and '260 references are merely directed to products associated with coffee. There is no teaching whatsoever in the references relied on by the Examiner that even remotely suggests that less than conventional amounts of infusible or water soluble materials selected may be used in combination with aroma compound additive to make a superior precursor or beverage as claimed herein. In view of this, all of the important and critical limitations set forth in the presently claimed invention are not found in the references relied on by the Examiner. Therefore, the novelty rejections relying on the same should be withdrawn and rendered moot.

V. Rejection Under 35 USC §102(b)

The Examiner has rejected claims 1-4, 7, 9-13, 16 and 18 under 35 USC §102(b) as being anticipated by Johnson et al., U.S. Patent No. 4,076,847 (hereinafter, '847). In the rejection, the Examiner mentions, in summary, that the '847 reference discloses a product with tea and aroma in a bag. The Examiner continues by mentioning that in view of the term "conventional amount" (which the Examiner has concluded is indefinite), the Examiner believes that the rejection made with respect to the '847 reference is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a beverage precursor that comprises insoluble or water soluble material an aroma compound additive wherein the infusible or water soluble material is present at a level that is less than a conventional amount. Moreover, Applicants have claimed a superior beverage composition made from the precursor of claim 1 wherein beverage composition is made with less infusible or water soluble material yet in combination with aroma compound additive. The resulting beverage composition is preferred by consumers when compared to conventional beverage products made with the standard level of infusible or water soluble material. Again, Applicants submit that the less conventional amount is now clear and specifically set forth in the claims as suggested by the comments made by the Examiner.

In contrast, the '847 reference merely describes beverage compositions that have flavor granules coated on the outer surface with a powdered beverage such as tea, cocoa or coffee. Such granules are preferably prepared by coating the flavor granules in a rotating granulator. Nowhere in the '847 reference is it even remotely taught or suggested to make a beverage precursor or a beverage composition with less infusible or water soluble material than conventional products and in combination with an aroma compound additive. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not, even remotely found in the '847 reference. Therefore, Applicants respectfully request that the novelty rejection be withdrawn and rendered moot.

VI. Rejection Under 35 USC §103

The Examiner has rejected claims 1-18 under 35 USC §103(a) as being unpatentable over DE 19919711 (hereinafter, '711). In the rejection, the Examiner mentions, in summary, that the '711 reference does not disclose a particular amount of infusible or

water soluble material but that it would have been obvious to one or ordinary skill in the art at the time the invention was made to derive such amounts. The Examiner also mentions that the '711 reference is deficient in regards to the use of tea leaf that has been decaffeinated, but the Examiner believes that the same would have been obvious for various health benefit reasons. Even further, the Examiner mentions that the '711 reference does not disclose the aroma compound as a natural aroma compound, but that it would have been obvious to have employed a natural aroma compound. Finally the Examiner mentions that the '711 reference does not inherently provide for the precursor being prepared into a beverage but it should be noted that combinations of beverage precursor with water result in a beverage compositions. In view of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a beverage precursor comprising infusible or water soluble material in combination with an aroma compound additive wherein the infusible or water soluble material is present at a level that is less than a conventional amount used for a standard serving of beverage. The invention as set forth in this application is also directed to a beverage composition made from the beverage precursor described herein. Applicants have unexpectedly discovered that a reduced level of infusible or water soluble material in combination with aroma compound additive can yield a beverage precursor, and a beverage composition that is superior to a standard product made with a full dosage of infusible or water soluble material. Moreover, Applicants have clearly defined the amount of infusible or water soluble material that should be present, have defined the infusible material to be one which can be a tea leaf, and have defined the tea leaf as one which may be

decaffeinated tea leaf. The invention further is defined by Applicants to characterize the aroma compound as one which may be natural or artificial wherein the aroma compound additive can be recovered from tea leaves and tea leaf before the tea leaf is decaffeinated.

Clearly, all of the important and critical limitations set forth in the presently claimed inventions are not, even remotely, found in the '711 reference which is only directed to aromatization of tea and coffee with aromas. There is nothing that suggests in the '711 reference that less infusible or water soluble material can be used in combination with aroma compound additives. Moreover, the '711 references teaches away from the presently claimed inventions since it suggests that the invention described in the '711 reference is one which makes it possible for the consumer to add aroma to basic tea or coffee. Again, the precursor defined in the presently claimed invention is one which is ready for the consumer to use.

In view of the above, it is clear that all the important and critical limitations set forth in the presently claimed inventions are not found in the '711 reference. The Examiner has not established a *prima facie* case of obviousness and the rejection made under 35 USC §103 should be withdrawn and rendered moot.

VII. Rejeciton Under 35 USC §103

The Examienr has rejected claims 1-3 and 10-12 under 35 USC §103(a) as being unpatentable over EP 560609, Stoeckli et al., U.S. Patent No. 4,496,596, EP 011324, EP 001460 or Soughan, U.S. Patent No. 5,932,260 (hereinafter, '609, '596, '324, '460, '260, respectively). In the rejection, the Examiner mentions, in summary, that the references relied on do not disclose the particular amounts of infusible or water soluble material as claimed, but that it would have been obvious to arrive at the same

depending upon the strength of the aroma desired in the precursor. In view of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a beverage precursor comprising a reduced amount of infusible material or a reduced amount of water soluble material in combination with aroma compound additives. The reduced amount of infusible material or the reduced amount of water soluble material are specifically characterized within the independent claim directed to a beverage precursor and within the independent claim directed to a beverage composition made from the superior beverage precursor. Applicants have demonstrated that using less infusible or water soluble material in combination with aroma compound additive unexpectedly yields a superior beverage composition. Such a beverage composition is preferred by consumers over the conventional beverage composition made with the standard amount of conventional infusible or water soluble material. Clearly, there is no teaching whatsoever within the references relied on by the Examiner that even remotely demonstrates that reduced levels of infusible or water soluble materials as presently claimed can yield a superior beverage.

Applicants wish the record to reflect that such an invention is superior especially with respect to decaffeinated products which typically are not preferred, flavor wise, over fully caffeinated products. In view of the above, it is clear that all the important and critical limitations set forth in the presently named inventions are not even remotely found in the references relied on by the Examiner, either alone or in any viable

combination. In view of this, Applicants request that the obviousness rejection be withdrawn and rendered moot.

VIII. Rejection Under 35 USC §103

Finally, the Examiner has rejected claims 1-18 under 35 USC §103 as being unpatentable over Johnson et al, U.S. Patent No. 4,076,847. In the rejection, the Examiner mentions that if it is shown that the '847 reference does not disclose the particular amounts of infusible or water insoluble material as called for in the instant claims, it still would have been obvious to arrive at the presently claimed invention. In view of this the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a precursor having less infusible material or less water soluble material than conventional precursors whereby the same is in combination with aroma compound additive. The beverage precursor and the resulting beverage composition made from the same are superior since the resulting beverage composition is preferred by consumers when compared to conventional beverage products made with beverage precursor having higher or conventional "dosages" of infusible material or water soluble material. Such an invention is especially superior when decaffeinated products are made since decaffeinated products typically do not have flavor notes that match fully caffeinated products. Moreover, as set forth in the independent claims as now presented, the specific reduction of infusible material or water soluble material is clearly defined. Since the '847 reference merely discloses flavor granules coated wherein the granules

are coated by employing a rotating granulator, all the important and critical limitations set forth in the presently claimed inventions are not, even remotely, found in the '847 reference. In view of this, Applicants respectfully request that the rejection made under 35 USC §103 be withdrawn and rendered moot.

Applicants submit that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions concerning the present patent application, he is kindly invited to contact the undersigned at his earliest convenience.

Respectfully submitted,

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